

Committee on Mental Health and the Justice System Minutes

Monday, April 29, 2019

10:00 a.m. – 3:00 p.m.

State Courts Building • 1501 W. Washington St. • Phoenix, Arizona • Conference Room 119 A/B

Present: Kent Batty (Chair), Mary Lou Brncik, Amelia Cramer, Brad Carlyon, Judge Michael Hintze, Josephine Jones, Natalie Jones, Dianna Kalandros, James McDougall, Kristin McManus, Carol Olson, Ron Overholt, Chief Deputy David Rhodes, Leslie Schwalbe (Proxy for Jim Dunn), Commissioner Barbara Spencer, Judge Christopher Staring, Judge Fanny Steinlage, Paul Thomas

Telephonic: Judge Cynthia Kuhn, Chief Chris Magnus, J.J. Rico, Michal Rudnick

Absent/Excused: Judge Elizabeth Finn, Dr. Michael Shafer

Guests/Presenters: Alex Demyan, Megan Woods

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Don Jacobson, Stacy Reinstein

Regular Business

Welcome and Opening Remarks

Mr. Kent Batty (Chair), introduced himself and asked Committee members and guests to briefly introduce themselves. Mr. Batty welcomed the newest Committee members joining today in person: Natalie Jones, Coconino County Public Defender; Kristin McManus, Yuma County Legal Defender; and J.J. Rico, CEO of the Arizona Center for Disability Law joining telephonically.

Approval of Minutes

Members were asked to approve minutes from March 25, 2019, noting they were in the meeting packet and provided electronically in advance of the meeting. No changes to the minutes were noted. A motion to approve the minutes was made by Judge Hintze and seconded by Paul Thomas. Motion was approved unanimously.

Recent News & Updates

Mr. Batty updated the Committee on the Developing Mental Health Protocols Summit, held after the March Committee meeting. The Chair noted the Summit was well attended and well received. Presentations in the morning were given by Judge Leifman, Patti Tobias and Nicole Watters from the National Center for State Courts, and local examples were shared by David Rhodes and Beya Thayer from Yavapai County, Judge Tafoya and Paul Thomas from Mesa, and Judge Bryson and Ron Overholt from Pima County. The afternoon was spent with local jurisdiction teams beginning work on the Sequential Intercept Model, where each team was given a series of action planning worksheets to begin to address the protocols, including identification of gaps in services and opportunities for improvement. The Chair noted that the full Summit packet is posted on our MHJS Committee website. Mr. Batty asked if anyone who attended had feedback to share, and Mr. Overholt shared a major takeaway was that Judge

Leifman has been doing this work for 18 years and feels he has just scratched the surface, so we (in Arizona) should be proud of our work and continue to stay the course.

The Chair reminded the Committee about the SharePoint site, where members can find Committee documents and news and updates including a recent article on the Yavapai County Sheriff's Reach Out program, featuring Committee member David Rhodes.

The Chair congratulated Paul Thomas, Judge Tafoya and the Mesa Community Court, for being recognized at this month's Problem Solving Courts Conference with an AADCP Award (Association of Drug Court Professionals).

The Chair then provided an overview of today's agenda, including a brief background for the afternoon's prioritization exercise.

Workgroup Report: Competency Practices

Dianna Kalandros, Competency Practices workgroup chair, provided an update on the status of the workgroup's objectives and shared the draft mental-health-expert report templates with the Committee, noting the Guidelines that are required by statute and rule are also in their final stages of development in the workgroup.

Discussion ensued with Committee members asking the workgroup to ensure that certain areas of the forms are locked and unable to be changed, to keep within the statutory requirements and intent of the forms. Judge Steinlage also noted, from her experience as a defense attorney, that issues can arise, particularly when speaking to the defendant about understanding their own defense and possible defenses. Ms. Kalandros noted that while this is covered under "testify relevantly about the case," there is a need to ensure the training includes additional information about a defendant's own testimony and understanding of defenses. Mr. McDougall referenced the desire to cross-match the information with Title 36 decisions and forms – there is a strong need for the evaluator to make the comments that the defendant does or does not meet the standard for DTS/DTO/GD, as the report will become the basis for screening for court-ordered evaluation and treatment. Mr. McDougall noted that if the evaluator's language is not specific, the defendant will often not meet the standard for incapacity under the law.

Ms. Kalandros updated the Committee on the status of recommendations for the Competency Evaluator training, including working with the planning committee at the AOC (Education Services) to recommend necessary changes to the training and curriculum provided, including teaching to the new templates (once finalized), helping determine how questions from the mental health expert should be phrased with defendants, and adding in new case law and statutory changes. Dr. Olson also suggested to showing a video in the training of an interview with a defendant and asking the attendees to work on a report and discuss.

Ms. Kalandros also presented the workgroup's draft document outlining the minimum necessary documents to be placed in a statewide Rule 11 data repository. Committee and workgroup member Mr. Thomas shared the outline, noting this is a basic document to be further developed and handed off to the AOC IT team. Mr. McDougall noted that the same repository is needed for Title 36-related cases.

Key Issues Workgroup Report

Jim McDougall, Key Issues workgroup chair, thanked all the members of the workgroup for all of their hard work and discussions as they continue to work on very important issues for the state.

Mr. McDougall updated the Committee on the Pima County Incompetent-Not-Restorable legislative proposal, including the changes that were submitted by the Pima County Attorney's Office following the March Committee meeting. Mr. McDougall confirmed with the Chair that the workgroup will develop a statement that will be submitted through the Committee's formal process with AJC that the Committee recommends work to be done on this topic. Mr. McDougall noted that the Committee/AOC is not able to submit this as its own legislation to be introduced because there will likely be challenges through the Court.

Mr. McDougall next shared the workgroup's current discussion points around the challenges and potential solutions at the lower court jurisdiction level for court-ordered evaluation and treatment. An outline of the issue was shared with Committee members. Mr. McDougall noted there is a desire to work within the existing statute and process, but there needs to be a process developed for the courts to know how it happens and how to do it.

Committee members noted the benefits, constraints and differences in this process between more populated and rural counties. For example:

- Navajo County has an IGA with City Courts to engage in this process before a Rule 11 hearing – the defendant is identified in jail and the jail staff can file the petition and work directly with providers.
- In Yavapai County, the screening agency is the same contractor/provider as the evaluation agency, and there are some challenges with the contract itself; thus, Yavapai is looking at other solutions such as building a co-located Title 36 agency/facility next to the jail for lower level offenders.
- Judge Steinlage noted there is a missed opportunity in the process right now because low level offenders are not likely going to enroll themselves in services after leaving the jail, and this has high impact to the community and the person in need of psychiatric care. There is an opportunity within the SIM to look at coordination of care – an intersection of the two systems or to develop a third system for community treatment.
- The Chair noted the opportunity to have someone available to help navigate and take the individual to the appropriate agency when they are released from jail.
- Further discussion ensued regarding the cost issues between transferring the individual between the LJ and GJ courts, including cases going from a City prosecutor to a County Attorney. These cost issues were noted by other members as well.
- Committee members from AHCCCS and Mercy Maricopa noted that without one single statewide process – it depends what is happening in one County and what their needs are, but providers and AHCCCS are always willing to work with the individual counties and courts through their liaisons.
- Mr. Thomas also noted Mesa Municipal Court – one of the two pilot sites for handling Rule 11 – has handled 400 cases since starting, and the trends are going downward,

presumably because the police department is now working within its crisis unit to handle some of these individuals who previously would have been in court.

Committee Prioritization

Mr. Batty provided the Committee with an overview of the priority-setting exercise, looking at items that were previously placed in a parking lot, and determining how the Committee would prioritize the items that need emphasis going forward. This will help assist the Committee in formulating its interim report to the Arizona Judicial Council in October 2019, leading up to the final report in October 2020.

Following a group exercise, led by Don Jacobson, with the Committee, four areas from the “parking lot” were voted by the Committee as items to further refine over the next several meetings, in addition to the existing work to be done:

1. Address the lack of bed space by increasing the number of: inpatient, secure beds; community-based, secure residential placements; and community-based supportive housing, including group homes.
2. For people with co-occurring disorders, define and mandate comprehensive case management services with face to face contact in the community to coordinate treatment for mental health and co-occurring substance use disorder; to include housing, transportation, and other needed services.
3. Examine changes to statute to allow evidence of mental disorder as an affirmative defense to defendant’s *mens rea*.
4. Examine mandates for and improvement of oversight of the public mental health treatment system, both voluntary and involuntary. Recommend creation of a State Department of Mental Health Services.
 - a. Suggested rewrite for committee consideration as part of this priority: *Suggest improvements to the current mental health system mandates for oversight of the mental health treatment system (voluntary and involuntary).*

Good of the Order / Call to the Public

No members of the public asked to speak. The Chair noted a Doodle poll is out and Committee members should respond for the remaining Committee meetings August-December 2019.

Adjournment

The meeting was adjourned at 2:55 p.m. by order of the Chair.